IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CONTEMPT PETITION NO.361 OF 2004

In

WRIT PETITION NO.6837 OF 2002

Dr.Devraj Desraj Talwar : Petitioner

V/s.

Parasram Atmaram Chandnani & Ors. : Respondents

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Mr.D. Khambatta i/b. M/s.Dhru & Co., for the petitioner.

Mr.A.N.Nasarikar for respondent no.1.

Mr.V.K.Damle for respondent nos.2 and 3.

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CORAM : S.RADHAKRISHNAN &
S.A.BOBDE, JJ.

October 19, 2004.

P.C.:

1. After hearing the learned counsel for the parties for sometime, the learned counsel for the respondents states that only respondent nos.1 to 3 are residing in flat no.4, 1st floor, bldg. no.20/A, Kumari Jethi T. Sipahimalani Co-operative Housing Society Ltd. (formerly known as Navjivan Co-operative Housing Society Ltd.), Mori Road, Mahim, Mumbai--400 016. Respondent nos.1, 2 and 3 have filed an undertaking to this Court dated 19.10.2004

wherein they have unequivocally undertaken to this Court that they will hand over vacant and peaceful possession of the suit premises to the petitioner on or before 20.12.2004. They have also undertaken and stated that they are the only persons residing/occupying the said flat and no other person is residing in the suit flat. They have also undertaken that they will not alienate, encumber and/or part with possession of the suit premises and/or induct any third party into the suit premises. The said undertaking is accepted and taken on record and marked 'X' for identification.

2. The learned counsel for the respondents, who are all personally present in this Court, also state on instructions from respondent no.2, who is personally present, that respondent nos.2 and 3 have filed in the Court of Small Causes at Mumbai R.A. Declaratory Suit (Stamp) No.786 of 2003. The learned counsel for respondent no.2, on instructions from respondent no.2, undertakes that respondent no.2 will withdraw the aforesaid suit within a period of one week from today from the Court of small Causes at Mumbai. The learned counsel for the respondents undertakes after taking instructions from their clients that the respondent nos.1 to 3 will pay the arrears of rent as well as regular rent upto

20.12.2004 and the entire arrears of rent of Rs.1,30,894/- will also be paid within a period of two weeks from today. The said undertaking of respondent nos.1 to 3 to pay arrears of rent is accepted.

3. To ensure proper compliance of the aforesaid undertaking that respondent nos.1, 2 and 3 will hand over vacant and peaceful possession, we appoint the Court Receiver, High Court, Bombay, as Receiver of the suit premises. Respondent nos.1, 2 and 3 shall act as agents of the Court Receiver and they shall enter into agency agreement within a period of two weeks from today. Respondent nos.1 to 3 are appointed as agents of the Court Receiver without any security and without payment of royalty. The learned counsel appearing for the petitioner states that necessary charges with regard to the Court Receiver will be borne by the petitioner. It is made clear that respondent nos.1, 2 and 3 shall hand over vacant and peaceful possession of the suit premises on or before 20.12.2004 and upon failure to do so, the Court Receiver will be entitled to take forcible possession of the suit premises, if necessary, with the assistance of the local police and hand over possession of the same to the petitioner. In the event of failure to pay the aforesaid arrears of rent within a period of two weeks as

aforesaid, the Receiver shall be entitled to take forcible possession of the suit premises forthwith.

4. The Contempt Petition stands disposed of in the above terms.

5. All concerned to act on an authenticated copy of this order.

Sd/-

(S. RADHAKRISHNAN, J.)

Sd/-

(S.A. BOBDE, J.)